

Haridwar Pandey Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Aug-27-1998

Reported in : 1998(4)AWC64; [1999(81)FLR126]

Judge : D.K. Seth, J.

Acts : Allahabad High Court Rules, 1952 - Rule 7; [Constitution of India](#) - Article 226; Dying in Harnes Rules

Appeal No. : C.M.W.P. No. 37911 of 1994

Appellant : Haridwar Pandey

Respondent : State of U.P. and Another

Advocate for Def. : K.R. Singh and ;S.C.

Advocate for Pet/Ap. : Govind Krishna, Adv.

Judgement :

D.K. Seth, J.

1. Father of the petitioner died on 5.6.1993. The petitioner had applied for appointment under the Dying In Harness Rules on 21.7.1993. It is alleged that this application has not been considered. Therefore, the petitioner filed the present writ petition praying for appointment under the said rules.

2. Mr. Govind Krishna, learned counsel for the petitioner contends that since the petitioner is eligible for appointment under the Dying in Harness Rules, therefore, appointment should have been given to the petitioner and thus writ petition should be allowed.

3. However, as pointed out by Mr. K. R. Singh, learned standing counsel, it appears that the petitioner had already filed a writ petition being W.P. No. 29878 of 1994, which was disposed of on 12.9.1994 with the following order :

'As the matter is to be decided on facts by the respondents in accordance with law. I do not propose to enter into the merits of the writ petition. Accordingly, I direct the respondent No. 2 to consider and dispose of the representation of the petitioner (Annexure-2) dated 21.7.93 by a reasoned order within a period of six weeks from the date of production of a certified copy of this order as also a copy of the said representation before him.

However, the petitioner, as prayed for, is granted liberty to file a supplementary representation along with a certified copy of this order and if such a representation is filed, the same will also be disposed of by the respondent No. 2 while disposing of the earlier representation as stated hereinabove.

With this observation, the writ petition is finally disposed of.'

4. The petitioner having obtained one order on the same cause of action once in his earlier writ petition, he cannot claim same relief in a second writ petition in view of the provisions of Chapter XXII, Rule 7 of the Allahabad High Court Rules. Mr. Govind Krishna submits that he has not prayed for the same relief though cause of action is the same. On the other hand he contends that though the petitioner had filed a representation in terms of the order dated 12.9.94, but the same has not been decided as yet and therefore he has filed a fresh writ petition. Such contention is devoid of merit. Inasmuch as there was an order for consideration of his representation in the order dated 12.9.94. If the said order is not complied with, it was open to him to take resort to appropriate proceedings for non-compliance thereof. The Court cannot go on repeating its order neither the Court passes any infructuous order. Therefore, same cause of action which was involved in the

earlier writ petition which was sought to be remedied is again sought to be remedied by way of this writ petition where he is praying for the same order which had already been passed in his earlier writ petition on 12.9.94.

5. Therefore, the writ petition fails and is accordingly dismissed. There will, however, be no order as to costs.

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